IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.207 OF 1989.

1. Smt.Shobhana Ramesh Shah,
2. Miss Kalpana Ramesh Shah.
3. Miss Shilpa Ramesh Shah.
4. Miss Gita RameshShah.
5. Sankalp Ramesh Shah
   Nos.4 & 5 minors through
   their natural guardian No.1
   All r/o.Satyamev Housing
   Society, 44 Shaniwar Peth,
   Karad 415 110, Dist.Satara. .... Appellants.

Versus.

1. Popat Krishna Bhosale,
   R/o.Path Vadgaon, Dist.Kolhapur.
2. Ashok Lilachand Gundecha,
   R/o. Shivaji park, Kolhapur.
3. The New India Assurance Co.,
   Kolhapur Division, Opp: Parvati
   Theatre, Kolhapur. .... Respondents.

FIRST APPEAL NO. 208 OF 1989

Smt.Shobhana Ramesh Shah,
resident of Satyamev Housing
Society, 444, Shaniwar Peth,
Karad. ... Appellant.

Versus.

1. Popat Krishna Bhosale,
   R/o.Path Vadgaon, Dist.Kolhapur.
2. Ashok Lilachand Gundecha,
   R/o. Shivaji park, Kolhapur.
3. The New India Assurance Co.,
   Kolhapur Division, Opp: Parvati
   Theatre, Kolhapur. ... Respondents.

FIRST APPEAL NO. 209 OF 1989

1. Smt.Shobhana Ramesh Shah,
2. Miss Kalpana Ramesh Shah.
3. Miss Shilpa Ramesh Shah.
4. Miss Gita RameshShah.

5. Sankalp Ramesh Shah
Nos.4 & 5 minors through
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All r/o.Satyamev Housing
Society, 44 Shaniwar Peth,
Karad 415 110, Dist.Satara. .... Appellants.

Versus.

1. Popat Krishna Bhosale,
R/o.Path Vadgaon, Dist.Kolhapur.
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R/o. Shivaji park, Kolhapur.
3. The New India Assurance Co.,
Kolhapur Division, Opp: Parvati
Theatre, Kolhapur. .... Respondents.

Ms.Smita Mane holding for Shri Prafulla Shah for the Appellants in all the appeals.

Ms.Tarake holding for Shri R.A.Thorat for the Respondent No.2 in all the appeals.

CORAM : ABHAY S. OKA, J.

Date on which the judgment is reserved : 2nd May, 2006.

Date on which the Judgment is pronouced : 23rd June, 2006.

JUDGMENT.

1. These three Appeals can be conveniently disposed of by a common Judgment as the same arise out of a common Judgment and Award dated 5th April 1988 passed by the learned District Judge and ex-officio Member of the Motor Accident Claims Tribunal at Satara in three claim petitions filed by the Appellants. Out of the three claim petitions, Petition Nos.198 and 199 of 1984 have

been filed under section 110A of the Motor Vehicles Act, 1939 and Claim Petition No.239 of 1984 is filed under section 92A of the said Act of 1939. The accident occurred on 20th March 1984. The sole Appellant in the First Appeal No.208 of 1989 who is the Appellant No.1 in the other two Appeals Smt.Shobhana Ramesh Shah along with her husband Ramesh left their house at 5.00 a.m. on the fateful day for usual morning walk. They started walking towards the Airport which is located on the Karad-Satara Road. Shobhana's sister's son Sandeep was accompanying them. The accident took place at the junction of Pune-Bangalore National Highway and Karad-Patan Road. Shobhana and her husband Ramesh crossed a bridge over Koyana river which is part of the National Highway. They practically crossed the entire width of the bridge and when they were two feet away from the edge of the Highway, a car came from Satara side and gave a dash to both of them. Shobhana fell on one side and her husband Ramesh was thrown on the bonnet of the car and thereafter thrown on the western side of the car. The car did not wait and proceeded further. Ramesh succumbed to the injuries sustained by him on account of the accident on 25th March 1984. Though Shobhana suffered various injuries, she survived. Claim Petition No.198 of 1984 has been filed by Shobhana under section 110A of the said Act for claiming compensation

on account of the injuries suffered by her. Claim Petition No.199 of 1984 is filed by Shobhana and her three minor daughters and minor son claiming compensation on account of death of Ramesh. Claim Petition No.239 of 1984 is filed by Shobhana and her daughters and son under section 92A of the said Act claiming compensation on account of no-fault liability. According to the case of the original Claimants, Car bearing Non.MHU-5784 which was involved in the accident was owned by Respondent No.2 and was being driven at the relevant time by Respondent No.1. According to the case of the original Claimants, the fiat car was insured at the relevant time with the Respondent No.3-Insurance Company.

2. The Respondents Nos.1 and 2 filed their written statement and stated that the car in question was not at all involved in the accident and false record has been created by the Police for implicating the said opponents. The Respondent No.3 filed written statement and denied that the car was insured with it at the relevant time.

3. The learned Member of the Tribunal by the impugned Judgment held that the Claimants have failed to prove that the accident occurred due to rash and

negligent driving of the fiat car MHU-5784. The learned Tribunal accepted the case made out by the Respondents No.1 and 2 that their car was not at all involved in the accident.

4. The learned Advocate appearing for the Appellants submitted that the evidence on record clearly shows that the car was involved in the accident. She pointed out that the record was sought to be fabricated by the Respondents Nos.1 and 2 in support of the false plea taken by them. She invited my attention to the oral evidence of various witnesses and submitted that the findings recorded by the Tribunal are perverse. She also pointed out that the Tribunal has recorded a finding that the stand taken by Respondent No.2 as regards insurance was found to be false. She submitted that apart from the fact that the evidence on record is against the Respondents Nos.1 and 2, the Tribunal ought not to have accepted the case made out by the Respondent No.2 after recording a finding that the Respondent No.2 has come out with a false case regarding existence of insurance. The learned Counsel appearing for the Respondent no.2 supported the impugned Judgment and award by pointing out the evidence on record. She submitted that the entire burden of establishing involvement of the car owned by Respondent No.2 in the

accident was on the Appellants and the Appellants have failed to discharge the burden. She submitted that the Respondents No.1 has adduced satisfactory evidence to show that car was not involved in the accident and at the relevant time the car was elsewhere. None appeared for Respondents Nos.1 and 3.

5. It will be necessary to refer to the evidence of various witnesses which is recorded by the Tribunal. The Claimants have examined Shobhana who is the widow of the deceased and who is one of the injured persons. The Appellants have also examined one Gaurihar Ramchandra Mundhekar who claims to be an eye witness to the accident. The third witness examined by the Claimants is one Sandip Bipinchandra Shah, who was accompanying the Appellant Shobhana and the deceased Ramesh at the time of morning walk on the fateful day. The fourth witness examined by the Appellants is one Dr.Kiran Gavkar who has deposed about the injuries sustained by the Appellant Shobhana. Thereafter, the Appellant examined one Ramrao Yadav who was the Police Inspector attached to Karad Police Station at the relevant time. The Respondents have examined Respondent No.1, Respondent No.2 and one Balwant Govind Jadhav.

6. Shobhana has stated in her evidence that on 20th

March 1984 she along with her husband Ramesh left for morning walk. Sandip, her sister's son was accompanying them. They started walking towards Airport. She stated that they came near the junction of Patan Road and the New Highway and they practically crossed the entire new Highway. She stated that when they had crossed more than half the width of the road, a white fiat car came from the side of Satara in very high speed. The car gave a dash to herself and her husband Ramesh. She stated that as a result of the dash, she fell down. However, Ramesh was thrown on the bonnet of the car and from the bonnet he was thrown on the road. She stated that the car went ahead upto a distance of about 20 to 25 feet and thereafter stopped. She stated that inmates of the car came out of the car and they were coming towards her. However, number of other persons also started rushing and therefore, the passengers in the car went back to the car and left with the car. She stated that she noticed that the car number was MHU-5784.

7. The witness Gaurihar who is an eye witness has narrated the manner in which the accident took place. He described the manner in which the dash was given by the fiat car to Ramesh and his wife. He stated that the car came in a fast speed and as a result of impact, the

glass of the car was broken. He stated that there were 4 to 5 persons present in the car. He stated that the owner of the car had a jewellery shop in Ravivar Peth, Karad. He stated that he knew the person who got down from the car by face. However, he was not aware of his name. In the cross-examination certain contradictions were sought to be brought on record by confronting the witness with a statement of the said witness allegedly recorded by the Police.

8. The third witness examined by the Appellants was Sandip, who also supported the Appellants. He stated that the fiat car was having white colour. He stated that he could not read alphabets in the registration number of the car but he could notice that the number was 5784. The fourth witness examined by the Appellants is Dr.Kiran Gavkar who has described the injuries sustained by the Appellant Shobhana. I am dealing with his evidence in the later part of this Judgment. The fifth witness examined by the Appellant is Ramrao Yadav who was a Police Inspector attached to Karad Police Station at the relevant time. He stated that he took over investigation of the offence from Constable Vanjari. He denied the suggestion that when the investigation was carried out by Constable Vanjari, the registration number of the car was not known. He stated

that during the investigation the witness gave description of the car and the number of car as 5784. He stated that he had enquired with the R.T.O. by giving the number of the car. Before he could get the report, the car was found. He stated that he filed charge sheet against the Respondent Nos.1 and 2.

9. The Respondent No.1 was also examined. He stated that on 19th March 1984 he took the car of the Respondent No.2 bearing Registration No.MHU-5784 from Kolhapur to Sangli. He stated that he left Kolhapur at about 8.30 a.m. and the Opponent No.2 was in the car. He stated that they reached Sangli at about 10.00 a.m. He stated that as the Respondent No.2 could not finish his work at Sangli, they came by the car to the factory of Respondent No.2 at Sangli. They camped there in the night. On 20th March 1984 after finishing the work, they left Sangli at 2.30 or 3.00 p.m. and went back to Kolhapur. The witness was confronted by showing him his statement recorded by the Police in which he allegedly stated that on 18th March 1984 he along with Respondent No.2 had gone to Bombay by the same car and after finishing the work at Bombay they left for Kolhapur on 19th March 1984. He denied to have made such a statement to the Police. He admitted in the cross-examination that the colour of the fiat car was

white. He also stated that the Police had seized the fiat car in connection with the accident. The Respondent No.2 stepped into the witness box and deposed that on 19th March 1984 he had gone to Sangli by the same car and in the night he came to the guest house of M/s.Tunga Alloy and Steel Factory Pvt.Ltd. and stayed there. He stated that he returned to Kolhapur on 20th March 1984 by the same car. He stated that he never knew the Appellant Shobhana. He stated that the Police had taken his signature on a blank paper. He stated that on the date of the accident the vehicle was insured with the Respondent No.3. In the cross-examination he stated that he had lost the insurance policy and therefore, he was not in a position to show that the vehicle was insured with the Respondent No.3. In the cross-examination he stated that there is an entry made of his name in the guest house of the factory on 19th March 1984. He admitted that though the Police had obtained his signature on a blank paper in May 1984, he had not made any complaint about the same.

10. The Respondents Nos.1 and 2 also examined one Balwant Jadhav, who was in-charge of the guest house of Tunga Alloys & Steel Factory at Kupwad since 1982. He brought the register allegedly maintained in the said guest house in the year 1984. He stated that he was

aware that Respondent No.2 was coming to the factory regularly for last two years. He stated that in the guest house register even car number of the Respondent No.2 has been mentioned. He stated that on 25th January 1984 the Respondent No.2 had again come to the guest house. However, at that time he had not mentioned the car number of the Respondent No.2 in the Guest House register. He admitted that many other persons used to come to the guest house with their cars, but the register does not show the entries of the numbers of their car. He admitted that at Sr.No.112 in the register there is an entry of the name of Respondent No.1. He stated that entry No.111 is made by the Respondent No.2 and entry No.112 is by the Respondent No.1. He admitted that the handwriting of entries made at Sr.Nos.111 and 112 was the same. He stated that both the Respondents Nos.1 and 2 took meal in the guest house on that day. He admitted that in order to get exemption from income tax, the register has been maintained. The witness Jadhav has admitted that except for the entry made on 19th March 1991 in no other entry in the register the vehicle number of the Guest is mentioned. He admitted that on 25th January 1984 when Respondent No.2 had stayed in the guest house, he did not make entry of number of the car. The entry of number of car appears to have been made only against the entry made on

19th March 1984. The earlier entry in the register is of 7th March 1984 at Sr.No.110 and the subsequent entry No.113 is of 25th April 1984. He admitted that the entry as regards car number at Sr.No.112 is made between the two lines and such an entry can be made at any time. In my view, it is thus obvious that the entry of the car number is deliberately made with a view to create an evidence to show that the vehicle was not involved in the accident.

11. It is true that that the initial burden was on the Appellant to prove the involvement of the car owned by the Respondent No.2. The Appellant had discharged the said burden by examining Shobhana and Sandip. Both of them have stated the registration number of the car of the Respondent No.2. On the other hand the Respondent Nos.1 and 2 have come out with a case which is very suspicious. The entries in the register of the Guest House of their names and the registration number of the car appears to have been made with a view to create evidence. Otherwise there was no reason to make entry of the vehicle number in between the two lines. The Respondent No.1 has not deposed about any entry made in the Guest House Register. Even the Respondent No.2 did not depose about the entry in his examination-in-chief. Therefore the evidence in the

form of register maintained by the guest house cannot be considered as a proof of the fact that the fiat car was not involved in the accident. On the contrary such evidence appears to have been created with the object of showing that the car was not involved. The Tribunal has already held that the Respondent No.2 came out with the false case regarding the existence of Policy of Insurance. When there is word against word regarding involvement of the vehicle, if evidence adduced by the Appellant is found to be more reliable and the evidence of the other party is found to be unreliable, the former will have to be accepted. The Appellants had no grudge against the Respondents Nos.1 and 2. There was no reason for the Appellant to falsely implicate the Respondents Nos.1 and 2. Moreover, the Respondent No.2 came out with a false case regarding existence of insurance policy. The Respondents have also attempted to manipulate the entries in the Guest register. In addition to these factors, the Police after investigation filed charge sheet against the Respondents Nos.1 and 2. In my view the learned trial Judge has committed an error in holding that the Respondent No.2's car was not involved in the accident. The trial Court ought to have held that the evidence of the Respondents Nos.1 and 2 was unreliable and ought not to have relied upon the same.

12. Once it is established that the car was involved in the accident, it is obvious that the finding of negligence against Respondent No.1 must follow, because there is no contest made by the Respondents Nos.1 and 2 on the ground of negligence. It is not at all the case of the Respondent No.1 that he had taken all care to avoid accident. Therefore, the Respondents Nos.1 and 2 are liable to pay compensation to the Appellants.

13. So far as the application filed for claiming compensation on account of death of Ramesh is concerned, the evidence of Shobhana is relevant. She has stated that Ramesh was getting a sum of Rs.2500/- on average per month from his business. According to her, Ramesh was a wholesale agent of Tea and was having a shop by name "Shah Sales Corporation". He was also having a Candle Factory. He was running a printing press in partnership. After the demise of Ramesh none of the partners were interested in running the business and the same was closed. She has stated that she has spent a sum of Rs.2500/- on her own treatment and a sum of Rs.4000/- on the treatment of her husband.

14. There is no clear evidence to show that the income of the deceased was Rs.2500/- per month. There

is no documentary evidence on record to substantiate this contention. However, the deceased was carrying on business. On this aspect there is no serious contest in the cross-examination of Shobhana. His age at the time of death was 43 years. Therefore, broadly his income can be taken to be Rs.1500/-per month. A deduction of 1/3rd amount will have to be made on account of personal expenses. Thus multiplicand will be Rs.12,000/- (Rs.1000x12). The Apex Court has applied multiplier of 12 in case of a deceased who was 38 years old. In this case multiplier of 10 deserves to be applied considering that the age of the deceased was 43 years. Thus the total amount of compensation payable will be Rs.1,20,000/- to which usual amount of Rs.15,000/- pm account of loss of consortium etc. will have to be added and hence the Appellants in the First Appeal No.207 of 1989 will be entitled to a total compensation of Rs.1,35,000/-. Considering the recent trend of decisions of the Apex Court, interest at the rate of 7.5% per annum will have to be awarded. Now there is no question of awarding compensation under section 92A of the said Act of 1939. Hence First Appeal No. 209 of 1989 will have to be dismissed.

15. So far as the claim of Shobhana is concerned, Dr.Kiran Gavkar has stated that the said Shobhana

underwent a surgery for K-nailing. She remained as indoor patient from 20th March 1984 till 16th April 1984. Thereafter she was treated as an outdoor patient. The witness has stated that on 19th June 1984 the said Shobhana complained of pain in the left leg and therefore, the nails have been removed. According to him she is unable to walk properly as a normal person. According to Shobhana she has spent a sum of Rs.2500/- for treatment. However, there does not appear to be any permanent disability. Thus compensation of Rs.20,000/- will have to be granted on account of pain and suffering considering the nature of the injury and hospitalisation for a long time. To this amount a sum of Rs.2500/- by way of expenses will have to be added. Interest in this case will be also at the rate of 7.5% per annum.

16. There is no evidence on record to show that the car was insured with the Respondent No.3. Hence no order can be passed against the Respondent No.3.

17. Hence the following order is passed:

i) First Appeal No.207 and 208 are partly allowed by setting aside the impugned Judgment and order dated 4th April 1988. First Appeal No.209 of 1989 stands dismissed.

ii) The Respondents Nos.1 and 2 shall pay to the Claimants in Motor Accident Claim Petition No.199 of 1984 a sum of Rs.1,35,000/- together with interest thereon at the rate of 7.5% per annum from the date of filing of the Claim Application till realisation of the amount. The Claimants will be entitled to the proportionate costs throughout.

Claim against Respondent No.3 stands dismissed.

iii) The Respondents Nos.1 and 2 shall pay to the Claimant in Motor Accident Claim Petition No. 198 of 1984 a sum of Rs.22,500/- together with interest thereon at the rate of 7.5% per annum from the date of filing of the Application till realisation of the amount. The Claimant will be entitled to the proportionate costs throughout. Claim against Respondent No.3 stands dismissed.

Judge.

After the Judgment was pronounced, the leaned Counsel for the Respondent No.2 prays for stay. Time of three months is granted to the said Respondent to comply with the judgment.

Judge.